



2300 Lake Elmo Drive  
Billings, MT 59105

August 20, 2001

TO: Environmental Quality Council  
Director's Office, Dept. of Environmental Quality  
Montana Fish, Wildlife & Parks  
    Director's Office  
    Parks Division  
    Fisheries Division  
    Wildlife Division  
Montana Historical Society, State Preservation Office  
Janet Ellis, Montana Audubon Council  
Montana Wildlife Federation  
Montana State Library  
George Ochenski  
Montana Environmental Information Center  
Wayne Hirst, Montana State Parks Foundation  
Don Kendall, DNRC Area Manager, Southern Land Office

Lands Section  
Design & Construction  
Legal Unit  
Regional Supervisors

Ladies and Gentlemen:

The enclosed draft Environmental Assessment (EA) has been prepared and is submitted for your consideration. This proposed action will allow replacement of the City of Hardin water intake/blow-off airline requiring the excavation of three 24" intake pipes from the riverbank to the pump house (60 feet), and the replacement of two 3" air lines on top of these pipes. Following construction, the riverbank will be riprapped and seeded.

Questions and comments will be accepted until August 20, 2001.

If you have questions or need additional copies of the draft EA, please contact Montana Fish, Wildlife & Parks at 247-2940. All comments may be sent to the undersigned.

Thank you for your interest.

Sincerely,

*Harvey Nyberg* by C.D.E.  
Harvey E. Nyberg  
Regional Supervisor

Enclosure

*Big Horn*



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	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
9. Historical & archaeological sites				X		

2. Installation of the coffer dam may result in a short-term increase in turbidity at the construction site. All excavation of the intake pipes will be within the dewatered coffer dam or out of the river channel so this work will have little effect on water quality.

#### POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities				X		
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services				X		
11. Industrial & commercial activity				X		
12. Demands for energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows				X		

Other groups or agencies contacted or which may have overlapping jurisdiction \_\_\_\_\_

Individuals or groups contributing to this EA \_\_\_\_\_

Recommendation concerning preparation of EIS This environmental review demonstrates that the impacts of this proposed project are not significant so no EIS is required.

EA prepared by : Ken Frazer, Regional Fisheries Biologist  
Montana Fish, Wildlife and Parks  
2300 Lake Elmo Drive  
Billings, MT 59105  
(406) 247-2963

Date: August 20, 2001



## **APPENDIX A**

### **PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

**(List any mitigation/stipulations required, or note "None".)**

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS  
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

<b>YES</b>	<b>NO</b>	
<u>          </u>	<u>  X  </u>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
<u>          </u>	<u>  X  </u>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
<u>          </u>	<u>  X  </u>	3. Does the action deprive the owner of all economically viable uses of the property?
<u>          </u>	<u>  X  </u>	4. Does the action deny a fundamental attribute of ownership?
<u>          </u>	<u>  X  </u>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is <b>NO</b> , skip questions 5a and 5b and continue with question 6.]
<u>          </u>	<u>          </u>	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
<u>          </u>	<u>          </u>	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
<u>          </u>	<u>  X  </u>	6. Does the action have a severe impact on the value of the property?
<u>          </u>	<u>  X  </u>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is <b>NO</b> , do not answer questions 7a-7c.]
<u>          </u>	<u>          </u>	7a. Is the impact of government action direct, peculiar, and significant?
<u>          </u>	<u>          </u>	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
<u>          </u>	<u>          </u>	7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.